

August 22, 2022

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Response to Comments on SR-MSRB-2022-05

Dear Ms. Countryman:

On July 1, 2022, pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change consisting of amendments to MSRB Rule G-34, on CUSIP Numbers, New Issue, and Market Information Requirements, to make minor amendments to better align Rule G-34’s requirements for obtaining CUSIP numbers with the process followed by market participants and facilitate compliance with MSRB Rule G-34 by streamlining the rule text.

The proposed rule change was published in the Federal Register on July 13, 2022.³ The Commission received a total of three comment letters. All commenters expressed support for the proposed rule change.⁴

Response

While no commenters opposed the proposed rule change, two commenters raised questions regarding the MSRB’s rulemaking process.⁵ Specifically, commenters noted that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 95208 (July 7, 2022), 87 FR 41876 (July 13, 2022), File No. SR-MSRB-2022-05.

⁴ Letters from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America (“BDA”), Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”), and Kim Whelan, Co-President, and Noreen White, Co-President, Acacia Financial Group, Inc. (“Acacia”).

⁵ NAMA and Acacia.

MSRB's rulemaking process lacked transparency and predictability. Below, the MSRB responds to the material aspects of the comments received.

In March 2017, the MSRB published a Request for Comment ("RFC"), 2017-05, seeking public input on draft amendments to Rule G-34 that included, among other things, extending the obligation to obtain CUSIP numbers in competitive sales, which had been applicable to dealers acting as financial advisors for more than 20 years,⁶ to all municipal advisors.⁷ The MSRB received twenty comment letters in response to this RFC, six of which expressed the belief that the obligation to obtain CUSIP numbers in competitive offerings should rest with the winning underwriter.

In June 2017, after further review and consideration of the comments received on the first RFC, the MSRB published a second RFC on draft amendments to Rule G-34.⁸ The MSRB received sixteen comment letters in response to this RFC, five of which expressed the belief that the obligation to obtain CUSIP numbers in competitive offerings should rest with the winning underwriter.

In August 2017, the MSRB submitted a proposed rule change to the SEC to amend Rule G-34 to require, among other things, that municipal advisors obtain CUSIP numbers on competitive sales of new issue municipal securities ("2017 proposed rule change").⁹ The 2017 proposed rule change provided the rationale for extending the existing dealer obligation to obtain CUSIP numbers in competitive offerings to all municipal advisors, stating that:

the policy reasons to require dealer municipal advisors to apply for CUSIP numbers in competitive sales of new issue securities are just as applicable to non-dealer municipal advisors. Further, removing the municipal advisor (whether dealer or non-dealer) altogether from the requirement could result in trading delays where the winning dealer in a competitive transaction applies for the CUSIP number after the award is made. In the alternative, removal of dealer municipal advisors from the requirement could result in inefficiencies where multiple dealers apply for CUSIP numbers for the same transaction before the award is made and subsequently cancel them if they are not selected as the winning dealer. The proposed rule change therefore would require municipal advisors, both dealer and non-dealer alike, to apply for CUSIP numbers for new

⁶ Securities Exchange Act Release No. 22730 (Dec. 19, 1985), 50 FR 53046-01 (Dec. 27, 1985), File No. SR-MSRB-85-20.

⁷ MSRB Notice 2017-05 (March 1, 2017). This RFC included an economic analysis of the proposal.

⁸ MSRB Notice 2017-11 (June 1, 2017). This RFC included an economic analysis of the proposal.

⁹ File No. SR-MSRB-2017-06, available at [MSRB-2017-06.ashx](#). This proposed rule change included an economic analysis of the rule proposal.

issue securities when advising on a competitive sale of such new issue securities. This ensures efficiencies in the market by requiring CUSIP numbers to be assigned prior to the award of the issue in a competitive sale where a municipal advisor is retained.¹⁰

On September 18, 2017, the 2017 proposed rule change was published for comment in the Federal Register.¹¹ The SEC received thirteen comment letters, six of which expressed the belief that the obligation to obtain CUSIP numbers in competitive offerings should rest with the winning underwriter. The MSRB responded to the comment letters on November 7, 2017, noting that the MSRB “continues to believe that expanding the requirements of Rule G-34 to apply to all municipal advisors in a competitive sale of new issue municipal securities will encourage uniformity and efficiency in competitive sales of municipal securities.”¹²

The MSRB also filed an amendment to the 2017 proposed rule change on November 7, 2017, which was published for comment in the Federal Register on November 17, 2017.¹³ The SEC received two comment letters, neither of which expressed a view on expanding the obligation to obtain CUSIP numbers to municipal advisors. The MSRB responded to the SEC on December 8, 2017.¹⁴

On December 14, 2017, the SEC approved the 2017 proposed rule change. The SEC found that “the MSRB’s proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB” and noted that “the Commission believes that while in practice some non-dealer municipal advisors may be applying for CUSIP numbers in a competitive offering before the final award is made, the proposed rule change, as modified by Amendment No. 1, would ensure that this is the case, thus reducing the risk of delays in secondary market trading where a competitive offering is awarded but no CUSIP number has been assigned.”¹⁵

¹⁰ *Id.*

¹¹ Securities Exchange Act Release No. 81595 (Sept. 13, 2017), 82 FR 43587 (Sept. 18, 2017).

¹² Letter from Margaret R. Blake, Associate General Counsel, MSRB, to Secretary, SEC, dated November 7, 2017, available at <https://www.sec.gov/comments/sr-msrb-2017-06/msrb201706-2674227-161458.pdf>.

¹³ *See* Exchange Act Release No. 82053 (Nov. 13, 2017), 82 FR 54455 (Nov. 17, 2017).

¹⁴ *See* Letter to Secretary, Commission, from Margaret R. Blake, Associate General Counsel, MSRB, dated December 8, 2017, available at <https://www.sec.gov/comments/sr-msrb-2017-06/msrb201706-2779641-161626.pdf>.

¹⁵ *See* Securities Exchange Act Release No. 82321 (Dec. 14, 2017), File No. SR-MSRB-2017-06, 82 FR 60433 (Dec. 20, 2017).

After SEC approval of the proposed rule change, the MSRB continued to engage with stakeholders on implementation of the amendments to Rule G-34. During this on-going engagement, municipal advisors continued to assert that, while obtaining a CUSIP number may only take a short period of time, developing compliance and supervisory policies to undertake the activity and then follow and document the process takes hours and such burden outweighs any regulatory purpose.¹⁶ As a result, the MSRB determined to undertake a retrospective review of the new G-34 obligations. The MSRB issued an RFC in February 2019 seeking input on, among other things, the impact to the market if CUSIPs were not obtained by municipal advisors in competitive offerings, the costs of implementing the G-34 obligations, and alternative ways to achieve the intended benefits of the CUSIP Requirement that the MSRB should consider.¹⁷

In May 2019, the comment period for the RFC closed. The MSRB received eight comment letters in response to this RFC; commenters continued to have diverse views. Some commenters thought it was inappropriate for a retrospective review so soon after the adoption of the amendments and others reiterated the view that there is no value in having municipal advisors obtain CUSIP numbers in a competitive offering and the obligation should rest with the winning underwriter.¹⁸

In July 2019, the Board authorized staff to amend Rule G-34 to create a new obligation that would require the winning underwriter in a competitive offering to obtain the CUSIP numbers, effectively rescinding the obligation created in 1986 and expanded in 2017. At that time, as noted in the MSRB's press release, the decision was supported by the comment letters that indicated that "the requirement [to obtain CUSIP numbers] imposed burdens on municipal advisors that were not necessary or appropriate in light of the limited benefits to the functioning of the market."¹⁹

In October 2019, the SEC issued an order granting a temporary conditional exemption permitting registered municipal advisors to engage in certain solicitation activities in connection with the direct placement of municipal securities without registering as a broker ("SEC's Proposed Exemption"). Consistent with its mandate to promote a fair and efficient municipal securities market, the Board evaluated the potential impact of the SEC's Proposed Exemption to ensure the preservation of applicable regulatory protections. The Board noted in its public comment letter that if the SEC's Proposed Exemption were to move forward, the MSRB would need to amend several MSRB rules including Rule G-34, which would need to be amended to require municipal advisors to obtain CUSIPs when acting as a placement agent, including in a

¹⁶ See MSRB Notice 2019-08 (February 27, 2019), available at [MSRB Notice 2019-08](#).

¹⁷ *Id.*

¹⁸ Comments on Notice 2019-08 are available here <https://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2019/2019-08?c=1>.

¹⁹ See MSRB Press Release (July 29, 2019) available at [MSRB Holds Final Quarterly Board Meeting of FY 2019](#).

direct placement.²⁰ In light of a possible amendment to Rule G-34 that would require municipal advisors to have policies and procedures in place for the process of obtaining CUSIPs, the Board determined to pause moving forward with a rule change that would effectively have municipal advisors abandon the policies and procedures already established for obtaining CUSIP numbers.

Concurrently, in response to the COVID-19 pandemic, the MSRB was engaged in significant outreach and coordination to prioritize its regulatory functions, including monitoring, and assessing the impact on the municipal market, issuers and investors, as well as addressing compliance and operational challenges that regulated entities were facing. In coordination with the SEC, the MSRB engaged in several rulemaking initiatives to reduce certain regulatory burdens for dealers and municipal advisors during such unprecedented times. The relief the MSRB provided through these rulemaking efforts included extending the deadlines, in some cases more than once, for:

- Implementation of Form G-32 and changes to Rule G-32;
- Certain supervisory obligations, including the completion of the annual certification by the chief executive officer(s) (or equivalent officer(s)) of a municipal advisor, pursuant to Rule G-44(d), to certify in writing that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures;
- Completing a needs analysis and delivering continuing education, pursuant to Rule G-3(i)(i)(B) and G-3(i)(ii); and
- Persons acting in the capacity of a municipal advisor principal to become qualified with the Municipal Advisor Principal Qualification Examination (Series 54).

In light of the foregoing, at its April 2021 meeting, the Board concluded that “since the rule has been fully implemented in firms’ processes for several years and has proven to enhance market efficiency by ensuring CUSIP numbers are obtained at the earliest stage in a competitive deal,” it would “maintain the rule in its current form.”²¹ In approving the MSRB’s rulemaking agenda, the Board must be able to act based on the current information available even if that results in a decision that is inconsistent with a prior Board vote.

In establishing the initial obligation for dealers acting as financial advisors in 1987 and in applying the obligation to all municipal advisors in 2017, the rule was designed to enhance market efficiency by having CUSIP numbers obtained at the earliest stage in the process to facilitate the ability for trading in the new issue to begin more promptly upon award. The economic analysis provided throughout the rulemaking process indicated that this benefit was balanced with the regulatory burden, which was deemed heaviest upon implementation due to

²⁰ Letter from Edward J. Sisk, Chair, MSRB to Vanessa Countryman, Secretary, SEC, dated December 9, 2019.

²¹ See MSRB Press Release dated April 23, 2021, available at [MSRB Holds Quarterly Virtual Board Meeting](#).

the establishment of policies and procedures for the task of obtaining CUSIP numbers. The time and costs for establishing policies and procedures are typically considered sunk costs that cannot be recovered after implementation. In providing feedback to the MSRB on the implementation of Rule G-34 in 2019, NAMA supported this view noting that many municipal advisors “indicate that the process of updating their policies and procedures related to the Rule was the most time consuming element and that, on an ongoing basis, the compliance costs related to firm practices will be about 6-10 hours per year.”²²

Immediately after the Board’s decision in April 2021, the MSRB continued to engage with its municipal advisor stakeholders and staff spoke with NAMA and others to discuss the Board’s decision. As a result of this engagement and based on that feedback, the Board determined to revisit Rule G-34. At its meeting of July 21-22, 2021, the Board authorized staff to make minor amendments to the text of Rule G-34 to better reflect the process that municipal advisors and dealers were already undertaking in obtaining CUSIP numbers.

Throughout 2021, the MSRB continued to closely monitor the impact of the pandemic on municipal market participants and market activity and was speaking with market participants even more frequently to receive input regarding operational challenges due to the prolonged nature of the pandemic; those conversations informed the priorities of the Board. As a result, the majority of the MSRB’s rulemaking activities continued to be for the purpose of providing regulatory relief to address the operational challenges both dealers and municipal advisors were experiencing.

In addition, between July 2019 through September 2021, the MSRB held several regional town hall meetings with municipal advisors that also included office hours available for attendees to ask additional questions.²³ This forum provided the MSRB with additional feedback to understand the challenges of municipal advisors. Board members and staff met with over 230 municipal advisors during these town halls where Board initiatives were discussed, including the MSRB’s rulemaking agenda, which included the status of the retrospective review of Rule G-34. The views expressed in the current comment letters were not echoed among the hundreds of town hall attendees. In fact, the common primary concern commonly expressed across the various town halls related to unregistered municipal advisory activity.²⁴

²² Letter from Susan Gaffney, Executive Director, NAMA, to Ronald W. Smith, Secretary, MSRB, dated May 28, 2019.

²³ Midwest Town Hall held on July 2021, West Town Hall held on August 5, 2021, Southwest Town Hall held on August 24, 2021, Southeast Town Hall held on September 14, 2021, and Northeast Town Hall held on September 21, 2021. Municipal advisors were free to attend any, and all, townhalls and, in total, over 230 municipal advisors were in attendance.

²⁴ [See Unregistered municipal advisors? See something, say something | Bond Buyer.](#)

Economic Analysis

The original economic analysis that accompanied the proposed rule changes to G-34 continues to support the implementation of the obligation for dealer and non-dealer municipal advisors to obtain CUSIP numbers in competitive offerings. As Table 1 illustrates,²⁵ since the June 2018 amendments to Rule G-34, proportionately more requests are Regular Requests as municipal advisors usually submit a CUSIP number application days before a competitive sale. While 77% of all requests were Regular Requests in May 2018, the month before the amendments to Rule G-34 became effective, the percentage of Regular Requests rose to approximately 90% after the amendment implementation and reached 91% in January 2021. The gain in the percentage of Regular Requests implies a more orderly and efficient competitive sale market, which is the purpose that the 2018 amendments to Rule G-34 were intended to effect. The 90% Regular Request rate is consistent with the percentage of competitive offerings having a municipal advisor,²⁶ suggesting that nearly all competitive offerings with a municipal advisor apply for CUSIP numbers with a Regular Request. While Rule G-34 requires a municipal advisor to obtain a CUSIP number in a competitive sale, the rule does not mandate who shall pay the fees for the CUSIP numbers.²⁷

In addition, it is apparent that many, if not most, municipal advisors were applying for CUSIP numbers in a competitive offering prior to a competitive sale time even without the requirement,²⁸ as manifested in the 77% Regular Request rate in May 2018. Finally, Table 1 also shows that the percentage of express requests were consistently higher for competitive notes than for competitive bonds,²⁹ approaching nearly 96% in January 2021.

²⁵ Requested data was obtained from CUSIP Global Services (“CGS”). For this analysis, CGS provided to the MSRB all CUSIP requests generated from their online form applications for the pre-G-34 amendments month of May 2018 and the post-G-34 amendments months of May 2019, May 2020, and January 2021. Requests through other channels such as email were not captured in the CGS data.

²⁶ This is based on primary offering data obtained through data services of Thompson Reuters. Not all competitive offerings have a municipal advisor.

²⁷ Rule G-34 does not stipulate who must bear the cost for the CUSIP numbers obtained. Even though the request for a CUSIP number may come from a municipal advisor, it is not mandatory for the party applying for the CUSIP number to be billed for the fees. It is the MSRB’s understanding that it is common that only the winning bidder for a competitive offering is billed after the CUSIP numbers are assigned.

²⁸ By comparison, in a negotiated offering, underwriters are already established and CUSIP numbers can be assigned before final pricing.

²⁹ For competitive notes, an offering can be awarded to multiple dealers with different coupon rates. The total number of CUSIP numbers is therefore unknown prior to the completion of a bidding process.

Table 1. Types of CUSIP Number Requests Before and After June 2018 G-34 Amendments

	Regular Requests	Express Requests
Competitive Bonds		
May 2018 - Pre-G-34 Amendments	77.2%	22.8%
May 2019 - Post G-34 Amendments	88.0%	12.0%
May 2020 - Post G-34 Amendments	89.0%	11.0%
Jan 2021 - Post G-34 Amendments	91.2%	8.8%
Competitive Notes (BANS, RANS, TRANS, etc.)		
May 2018 - Pre-G-34 Amendments	31.7%	68.3%
May 2019 - Post G-34 Amendments	56.4%	43.6%
May 2020 - Post G-34 Amendments	1.7%	98.3%
Jan 2021 - Post G-34 Amendments	4.3%	95.7%

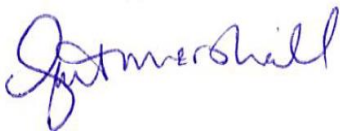
Express requests for CUSIP numbers, where a CUSIP number would be granted within an hour as opposed to one to two business days cost 50% more in fees than regular requests for CUSIP numbers.

Conclusion

The MSRBR believes that the foregoing responds to the material issues raised by the commenters on the rule filing. If the Commission approves the proposed rule change, which was fully supported by all commenters, the MSRBR will continue to engage with stakeholders to support the implementation of the amendments.

If you have any questions, please feel free to contact me at 202-838-1500.

Sincerely,



Gail Marshall
Chief Regulatory Officer